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ABSTRACT

In recent years, existing family legislation in Sweden has undergone a review process resulting in extensive revisions. The decisive factor behind these revisions has been change in Swedish society during the 20th century, including urbanization, frequent changes in residence, fewer children per family, the labor force participation of most women with small children, greater numbers of children born out of wedlock, and greater numbers of divorces. This article briefly discusses the central features of Swedish family law with regard to marriage, married names, mutual obligation of support during marriage, and divorce. Additional discussion is devoted to Swedish law applying to children (i.e., a child's last name; child custody; visitation and access rights; child support; visitation expenses; enforcement of custody, visitation, and child support; and adoption). Innovations in legislation include a law concerning a child's rights to care, security, and a good upbringing (and parents' rights to make decisions about these issues); a law that expressly states that children may not be subject to physical punishment; automatic joint custody of children upon divorce unless the parents disagree; a child's rights to access to others besides his parents (such as grandparents and foster parents); maintenance allowance guidelines for calculating child support; and government payment of missed child support payments with parental reimbursement to the government. (CB)

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CHILD CUSTODY RULES IN THE CONTEXT OF SWEDISH FAMILY LAW

by Bertil Ekdahl

Bertil Ekdahl is an assistant appeal court judge, currently working as a legal expert at the Ministry of Justice.

In recent years, existing Swedish family legislation has undergone a review process, resulting in extensive revisions. The decisive factor behind these revisions has been the changes in Swedish society during the 20th century: Nowadays people often change their place of residence several times during their life. The number of children per family has fallen dramatically. The great majority of women with small children work outside the home, and the number of divorces has increased sharply.

In this article, Bertil Ekdahl discusses various aspects of Swedish family law and how it has been revised with regard to the legal status of children, especially following a divorce. In connection with this, he also describes the existing rules for marriage and divorce as well as issues like maintenance payments and access or visitation rights between children and parents.

During the 20th century Sweden has evolved from an agrarian country to a highly industrialized society. People have largely moved from the country-side into cities and towns. A growing proportion of them move house and change place of residence several times during their lives. Family patterns have changed, too. Households have become smaller. The number of children per family has fallen dramatically. Today 85% of families with children include only one or two children, while only 2% have four or more children.

Another obvious change is that a growing proportion of babies are being born to unwed mothers. In 1980 about 40% of babies in Sweden were born out of wedlock, compared with 18% in 1970. One factor behind this dramatic change is that to a larger extent than previously, an unwed mother will live together with the baby's father without being married to him.

In recent years the number of divorces has also risen sharply. As an example, the number of children whose parents sought a divorce in 1970 was less then 13,000, whereas the number had increased to more than 20,000 in 1979.

Perhaps the most important trend affecting the situation of children is the growing proportion of mothers working outside the home. In 1981 gainfully employed women with children under age 7 comprised 80% of all women in this category.

Large portions of Swedish family law were codified in the early 20th century. The subsequent economic and social changes described above have compelled extensive revisions in family law. In 1969 the Cabinet appointed a Family Law Reform Commission to re-assess and modernize the existing legislation. In 1974 the work of the commission resulted in new legislation on marriage and divorce. Another consequence of its work is legislation in effect since 1979 concerning economic support to children, spouses and former spouses.

In a report, the commission has recommended far-reaching changes in the rules on matrimonial property and certain issues related to rights of inheritance. It has also proposed rules for unmarried people who live together. The recommendations of the commission are currently under review within the Ministry of Justice and may result in new legislation no earlier than 1986.

The issue of the legal situation of children has attracted growing attention in recent years. As early as 1970, a law was passed that gave children equal rights of inheritance regardless of whether they were born into a marriage or not. In 1977 another new law gave parents the option of joint custody of children following their divorce. That same year, the Cabinet appointed a new commission of inquiry to examine the issue of the legal status of children. At the recommendation of this commission, in 1979 legislation was enacted which forbids parents from physically punishing their children. In order to strengthen the legal status of children, new rules concerning child custody and visitation or access rights were enacted effective on July 1, 1983. The Commission is continuing to work on other issues, such as adoption and the right of children to file suit.

Another important innovation is a proposal for legal rules on artificial insemination, currently under study within the Ministry of Justice.

The following is a brief account of the central features of Swedish family law.

1. Marriage

In principle, only people aged 18 or over may marry. A person below this age may receive permission from the authorities to marry if those having legal custody of the youngster have been accorded an opportunity to state their opinion. People who are blood relations of unilinear descent may not marry each other. Nor may a person take the vows again while already married. Before a couple may marry, they must apply at the parish office where the woman is registered (in most parts of Sweden this administrative function is handled by the Lutheran state church), so that an investigation may be undertaken to determine whether any impediments to the marriage exist. The wedding may assume the form of either a church or civil ceremony.

2. Married names

According to the new Names Act which went into effect in 1983, at the time of marriage a couple may choose either of their last names as their common last name. In other words, nowadays the husband may assume the wife's maiden name if so desired. The couple may not, however, choose a surname that one of them has acquired through an earlier marriage. Instead of choosing a common last name, a couple may also retain the respective surnames they had immediately before getting married. A spouse who has adopted the other spouse's last name may use his or her previous surname as a middle name.

3. Mutual obligation of support

During a marriage, husband and wife have a mutual obligation to support themselves and each other. If one spouse is unable to support him/herself, the other is obliged to contribute to his or her support.

After a divorce, each spouse shall be responsible for supporting him/herself. During a transitional period, one spouse may be obligated to help support the other to enable the latter to obtain a source of livelihood through education or other means. If the marriage has lasted for many years and one spouse has substantial difficulty in earning a living following the divorce, the other spouse may be required to pay a maintenance allowance for a long period. If the husband and wife cannot reach agreement on the maintenance allowance, a court will settle the dispute.

4. Assets and liabilities of spouses

The regulations governing the assets and liabilities of spouses, distribution of property etc. are currently under review. New rules can be expected no earlier than 1986.

5. Divorce

A spouse who wants a divorce is entitled to receive it without stating any reasons for this wish. The court does not examine the personal relationships between the husband and wife. Neither spouse may lay the blame on the other for the purpose of being awarded damages or custody of the children of both spouses.

A couple who both want a divorce can obtain one immediately by applying to a court. But if they have children under age 16, the divorce must be preceded by a reconsideration period of at least six months and no more than one year. If only one spouse wants a divorce, he or she is entitled to it after the end of this waiting period.

If a married couple has lived apart for at least two years, they are entitled to divorce without any preceding reconsideration period.

6. A child's name

First name

Within three months after a baby is born, those having custody shall inform the local parish registry office in writing of the baby's first name. If the baby is to be christened within the Church of Sweden (Lutheran state church), an application will suffice as registration. Under certain circumstances a first name can later be added, changed, replaced or deleted.

Last name

If the parents both have the same last name when a baby is born, it automatically receives this name. If the parents have different last names when the baby is born, different rules apply depending on whether the parents have previously had children together or not. If the newborn baby has older full siblings who are under the joint custody of the parents, the newborn baby receives the same last name as the most recently born sibling. Otherwise the parents must choose a last name for the baby. They may choose between their own last names.

The name chosen must be communicated in writing to the parish registry within three months after the baby is born. If no written application is made, the baby is regarded as having acquired the mother's last name from its date of birth.

A child may later change to another last name which one of its parents then bears or which one parent bore before marrying. If the child is under age 18, those having custody must submit an application for this purpose to the parish registry. If the child is age 12 or older, it must agree to the change in name. If the child is changing to a last name which one parent obtained through marriage to a person other than the child's other parent, it is also necessary for the spouse in this marriage to approve of the name change. The approval of the parent whose name the child bears is also required if this parent does not enjoy custody of the child. If this parent should not give approval, it is instead necessary for a court to decide that the name change is in the child's best interests.

An adopted child receives the last name of its adoptive parents or one of these parents at the time of adoption, in accordance with the same rules that apply to newborn babies. Under special circumstances, a foster child may likewise change its last name to that of a foster parent.

7. Child custody

All children under 18 years of age who are not married are under the custody of one or two adults.

One of the purposes of the new legislation on child custody and rights of access which took effect in 1983 is to strengthen the legal status of children. For the first time in Swedish egal history, a child is entitled to care, security and a good upbringing. Another regulation states that a person enjoying custody of a child is entitled and obligated to decide issues concerning the child's personal affairs, for example its upbringing, maintenance and education. As a child becomes older and more mature, increasing attention shall be paid to the child's opinions and wishes. A person having custody of a child is responsible for keeping it from harm. A regulation which took effect in 1979 expressly states that children may not be subjected to physical punishment or other degrading treatment. Spanking or other corporal punishment is thus forbidden.

Custody

If a child's parents are married to each other when the child is born, both parents automatically have joint custody of the child. If the parents do not marry until later, they gain joint custody as a result of the marriage.

Effective from July 1, 1983, if the parents get a divorce they continue to have joint custody unless one of them has objections to such a solution. In other words, the law is based on the presumption that the parents should enjoy joint custody after the divorce. But the parents cannot be forced into this. If the parents do not want joint custody after a divorce or if they otherwise disagree on who should have custody, a court is supposed to decide the issue.

If a child's parents are not married to each other when it is born, the child is under the mother's custody. But a court can transfer custody to the father at his request, provided that the court finds this to be in the child's best interests.

One innovation in the new law is that unmarried parents may be granted joint custody of a child if both of them submit a simple application to the authority responsible for parish records.

When joint custody of a child does not work satisfactorily, either parent may go to court and request its dissolution. The question of who should then assume custody is examined and decided upon by the court on the basis of what is in the child's best interests.

Under certain circumstances, custody of a child may be transferred from a parent to another person, even against the parents' wishes. This is the case, for instance, if a parent does not take proper care of the child due to alcohol abuse or other reasons. This abuse or neglect must be so serious that it poses a permanent danger to the child's health or development. In other words, strong reasons are required before a parent may lose custody of a child.

In certain exceptional cases, custody may also be transferred to another person even if the parents have not failed to provide good care to the child. This applies in cases where a child has continuously been cared for and brought up in a foster home and it is obviously in the child's best interests to continue this relationship. Custody may then be transferred to the foster parents or to one of them.

8. Visitation and access rights

Swedish legislation is based on the concept that a child normally needs good, close contacts with both its parents - even if the parents live apart. If the parents do not have joint custody of the child, the parent who has custody is supposed to ensure that the child's need to visit the other parent is satisfied as far as possible. If the parents cannot agree on the terms of visitation and access rights, the parent who does not have custody may go to court and have these rights spelled out in a court ruling. On the other hand, legal means may not be used to force a parent to visit his or her child.

If the parents have joint custody, a court may not decide when the child should stay with one parent or the other. The parents themselves must reach an agreement on which of them the child will normally live with and when the child should meet the other parent. If the parents fail to reach agreement on these matters, one of them may ask a court to dissolve the joint custody arrangement.

Since July 1, 1983, a child's rights of access to other people besides its parents have been regulated by law. If a child has good, close relations with such people as ex-foster parents or grandparents, the child is entitled to visit them. In these cases, too, the parent who has custody shall ensure that the child's visitation needs are satisfied to the greatest possible extent.

9. Enforcement of custody or visitation rulings

If a child is living with a parent who does not have legal custody and this parent refuses to give up the child, the person entitled to custody may ask the county administrative court of appeal to ensure that the child is returned.

The county administrative court may decide on different measures. To begin with, the court will try to arrange the voluntary transfer of the child. Failing this, the court may enjoin the parent to surrender the child on penalty of fine. An injunction of this kind means that the person who has the child in his or her temporary care is threatened with a large monetary penalty if the child is not surrendered.

As a last resort, the county administrative court can order that the child be taken away by the police, something that only occurs in exceptional cases, at most a couple of times a year in order to return a child to those who have legal custody. Such measures may only be undertaken if there is no other way to persuade a parent to give up a child or if they are necessary to prevent a child from suffering serious harm.

Fines may also be imposed when a court has ruled that a parent not enjoying legal custody is entitled to visitation with a child and this right has been ignored. The police may be sent to fetch the child only if there is no other way to implement the decision and if the child has a particularly strong need to see its parent. Here, too, such action is very much the exception.

A county administrative court may not order the enforcement of a ruling if the child opposes it and if the child is at least 12 years old or has reached sufficient maturity that its own wishes should be taken into account. If the court nevertheless considers it necessary, with reference to the child's best interests, a ruling may be enforced even if the child is against it. Enforcement may not, however, take place if there is a significant risk that the child's bodily and mental health may be harmed.

10. Child support

Parents are responsible for providing their children with reasonable support, taking into account the child's needs and the economic situation of the parents.

Normally, the parents' obligation of support ceases on the child's 18th birthday. If at that time the child is still undergoing basic education (defined as compulsory or secondary schooling), the obligation of support remains as long as this schooling continues, but no later than the child's 21st birthday.

A parent who does not have legal custody of a child and lives separately has to pay a maintenance allowance, generally a fixed monthly amount. This allowance is fixed either by a court ruling or by means of a voluntary agreement.

When a maintenance allowance is to be fixed, a parent is entitled to withhold an amount sufficient for his or her own economic maintenance. This includes a sum for housing costs and other living expenses. The authorities also take into account whether the parent is obligated to support a spouse living at home and this couple's own children.

The National Board of Health and Welfare, a central government agency, has published written guidelines to help estimate living costs and maintenance requirements for children of various ages. Using these guidelines, it is possible to calculate what a parent should reasonably contribute toward supporting a child.

Visitation expenses

A person obligated to pay a maintenance allowance is allowed to reduce the amount of the allowance each time he or she takes care of the child for at least five full days and nights in a row.

No further reductions are allowed if, at the time the maintenance allowance was fixed, the parents assumed that the person obligated to pay the allowance would largely fulfill his or her obligation by taking care of the child.

Changes in agreed maintenance allowances

Maintenance allowances are linked to the Swedish consumer price index so that they will retain their original buying power. They are normally adjusted upward once a year; the percentage of increase is determined by a government agency.

If both parents concur, they may change the amount of a previously fixed maintenance allowance by writing a new agreement. This is true even if the allowance was originally fixed by a court.

If the two sides cannot agree, they must ask a court to change the maintenance allowance. The court may alter the amount of the allowance when there has been a change in circumstances, but this applies only to major, permanent changes.

Maintenance advances

In those cases where a child is legally entitled to a maintenance allowance but no such allowance is being paid, the national government may provide a so-called maintenance advance to the child. This is also true if the child is receiving a maintenance allowance which is clearly too small. The parent obligated to pay child support is then required to reimburse the government for the maintenance advances it has paid to the child. If the parent is economically unable to repay such advances, he or she may be excused from this obligation.

11. Adoption

A person who wants to adopt a child has to be at least 25 years old. A married person may only adopt a child jointly with his or her spouse, provided it is not a question of adopting the other spouse's child. Joint adoption is only possible if a couple is married, but a single person can also adopt a child.

As a rule, the child's approval is required if it is at least 12 years old. If the child is under age 18, the person who has legal custody must also agree to the adoption.

An adoption furthermore requires the approval of a court, which examines whether the proposed adoption is suitable. Prior to this, the municipal Social Welfare Board carries out an investigation.

When an adoption takes place, in principle all legal ties between a child and its biological family are cut off. The adopted child becomes an heir of its adoptive parents, not of its biological parents, and vice versa. The adopted child also acquires the last name of its adoptive parents as a result of the adoption.

The author alone is responsible for the opinions expressed in this article.

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